IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1324 of 1986

with

FIRST APPEAL No 1325, 1326 and 1327 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAYANBHAI ISHWARBHAI PATEL

Versus

NAJA ALASIAYER

Appearance:

Ms. Archana Amin forMR KG VAKHARIA
for appellants in all appeals.
Mr. Aspi Kapadia for MR SB VAKIL for Respondent No. 1-2,4
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE KUNDAN SINGH

Date of decision: 28/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

All these our appeals are being disposed of by this common judgment as they arise out of the impugned judgment and award dated 10.7.1986 passed by the learned Motor Accident Claims tribunal), Surendranagar disposing of four MAC Petition nos.230 of 1983 to 233 of 1983.

2. On 23rd February, 1982, all the appellants who are original claimants travelling in an Ambassador car no. GRG 5412 met with an accident with truck no. GTW 3682 wherein they received personal injuries. Therefore, they filed respective claim petition nos. 230 to 233 of 1983 before the learned Motor Accident Claims Tribunal, Surendranagar.

3. The appellant-claimant Narayanbhai Ishwarbhai Patel of First Appeal no. 1324 of 1986 had filed claim petition no.230 of1983 before the learned Tribunal claiming Rs. 3 lacs as compensation for the injuries received by him during the accident. His case was that he suffered 40% permanent disability. However, the learned Tribunal after considering oral as well as documentary evidence led by the parties came to the conclusion that at the most, disability can be assessed at the rate of 10 to 12% only. The learned Tribunal awarded Rs. 5000/- to the claimant under the head of medical treatment, special diet etc. with which we are not going to interfere with in this appeal, as, in our considered opinion, the learned Tribunal has awarded reasonable amount under this head. However, the learned Tribunal has awarded only Rs. 7500/- under the head of pain, shock and suffering. Considering the facts and circumstances of the case and keeping in mind various judgments of the Hon'ble Supreme Court and this Court, we are of the considered opinion that the appellant claimant would be entitled to at least Rs. 10,000/- by way of pain, shock and suffering. Thus, in this appeal, he is entitled for additional sum of Rs. 2500/- under the head of pain, shock and suffering. Accordingly, we award it. The learned Tribunal has awarded Rs. 2500/- as actual loss of income which we find absolutely reasonable. However, the learned Tribunal has awarded only Rs. 12000/towards future economic loss. The claimant was 53 years old at the time of the accident and the learned

Tribunal has taken datum figure of Rs. 1000/- per year and applying multiplier of 12 years, it has awarded Rs. 12000/-. However, considering the evidence of Doctor and other evidence on record, we are of the considered opinion that the learned Tribunal ought to have assessed the permanent disability at 40%. Admittedly, from the record, it appears that his income was Rs. 10,000/-. Therefore, at the rate of 40%, datum figure would come to Rs. 4000/per year. However, considering his age of 53 years at the time of the accident, we are of the considered opinion that instead of applying multiplier of 12 years, 7 years' multiplier would be reasonable. Accordingly, applying the multiplier of seven years, we come to the conclusion that the claimant would be entitled to Rs. 28000/- for future economic loss instead of Rs. 12,000/- awarded by the learned Tribunal. Thus, he would be entitled for additional amount of Rs. 16000/- under this head of future economic loss. Thus, this appeal is partly allowed. The appellant-claimant do recover additional sum of Rs. 18,500/- in this appeal jointly and severally from the respondents with interest at the rate of 6% from the date of the application till realisation. Award be drawn accordingly at the earliest and preferably within one month from today. The respondent Insurance company shall deposit the additional amount of Rs. 18,500/- awarded to the appellant-claimant before the Tribunal with costs and interest within three months from the date of receipt of certified copy of this judgment. On depositing the said amount, the Tribunal shall pay the same to the appellant-claimant by way of an account payee cheque after due verification. Accordingly, First Appeal no. 1324 of 1986 is partly allowed with proportionate costs to the aforesaid extent only.

4. First Appeal no. 1325 of 1986 is filed by the appellant Kanjibhai Narayanbhai Patel- the claimant of claim petition no.231 of 1983. He claimed Rs. 1 lac out of which the learned Tribunal has awarded Rs. 13,600/-. In this appeal he has claimed additional sum of Rs. 84,600/-. Due to injuries received by him, he had to remain in the hospital for 10 days. He was 50 years old. He claimed that there was 20% permanent disability, but according to the learned Tribunal, it was only 10% disability and on evidence, we are of the considered opinion that while assessing permanent disability at 10%, the learned Tribunal has not committed any error which calls for interference by this Court in this appeal.

The learned Tribunal, considering the

medical bills etc. awarded Rs. 900/- under the head of medical treatment, special diet etc. Having carefully considered the evidence on record and the reasoning given by the learned Tribunal, we are of the opinion that while awarding Rs. 900/- for medical treatment, special diet etc., the learned Tribunal has not committed any error which calls for interference by this Court. However, the learned Tribunal has awarded only Rs. 7000/towards pain, shock and suffering. Having regard to the facts and circumstances of the case and the injuries received by the claimant, we are of the considered opinion that the claimant was entitled for at least Rs.10,000/- under the head of pain, shock and suffering. In fact, the learned advocate Mr. Kapadia for the Insurance Company was also not in a position to oppose this additional amount of Rs. 3000/- under the head of pain, shock and suffering. Accordingly, we award additional sum of Rs. 3000/- to the appellant-claimant under the head of pain, shock and suffering.

The learned Tribunal has awarded Rs. 12000/- towards actual loss of income for two months to the claimant because for two months, he could not attend to his work which, in our considered opinion, is most reasonable and therefore, we do not see any reason to interfere with the same. However, the learned Tribunal has awarded in all Rs. 4500/- towards future economic loss. Taking datum figure of Rs. 300/- per year and applying multiplier of 15 years, the learned Tribunal has awarded Rs. 4500/-. However, we are of the considered opinion that his yearly income could easily be assessed at Rs. 7200/- and even at the rate of 10% disability, it would come to Rs. 720/- per year. However, we are not inclined to apply multiplier of 15 years which has been applied by the learned Tribunal in view of the fact that the appellant-claimant was already 50 years old. Therefore, applying multiplier of 10 years, we are of the opinion that the appellant-claimant would be entitled to in all Rs. 7200/- under the head of future economic loss. Thus, he would be entitled for additional sum of Rs. 2700/- under the head of future economic loss.

In view of the above discussion, this appeal is partly allowed. The appellant-claimant do recover additional sum of Rs.5700/- jointly and severally from the respondents with interest at the rate of 6% from the date of the application till its realisation with costs. Award be drawn accordingly at the earliest and preferably within one month from today. The respondent Insurance company shall deposit the additional amount of Rs. 5700/- awarded to the appellant-claimant before the

Tribunal with costs and interest within three months from the date of receipt of certified copy of this judgment. On depositing the said amount, the Tribunal shall pay the same to the appellant-claimant by way of an account payee cheque after due verification. Accordingly, First Appeal no. 1324 of 1986 is partly allowed to the aforesaid extent only with proportionate costs.

5. First Appeal No.1326 of 1986 is filed by the appellant claimant Mohanbhai Ganeshbhai Gohil who is the claimant of claim petition no. 232 of 1983. At the time of the accident, he was 55 yearsof age. He claimed that he suffered 80% disability. Therefore, he had claimed compensation of Rs. 1,60,000/- before the Tribunal. However, the learned Tribunal has awarded in all Rs. 20,400/-. Therefore, for the remaining amount of Rs. 1,39,600/-, he has filed the present appeal. Considering the evidence on record, the learned Tribunal has awarded only Rs. 900/- towards medical treatment. Having carefully considered the evidence on record as well as the reasoning assigned by the learned Tribunal, we are of the opinion that no error has been committed by the learned Tribunal in awarding Rs. 900/- under the head of medical treatment, special diet etc. Considering the fact that the appellant was hospitalised for nine days, the learned Tribunal awarded Rs. 10,000/- under the head of pain, shock and suffering which is absolutely reasonable. Therefore, we would not disturb the said finding. The learned Tribunal has awarded Rs. 1500/towards actual loss of income and towards future economic loss, the learned Tribunal has awarded Rs. 8000/-. In all Rs. 9500/- was awarded. Considering the disability suffered by the appellant-claimant and considering his income at the time of the accident and the fact that he was 55 years of age, we are not inclined to interfere with the amount awarded under this head. The learned counsel appearing for the appellant was not in a position to show us that the Tribunal has committed any error in awarding this amount. Thus, in our considered opinion, the present appeal filed by the appellant claimant is liable to be dismissed. It therefore, fails and is hereby dismissed with no order as to costs.

6. This brings us to the First Appeal no. 1327 of 1986 which is filed by the appellant Kapilaben Narayanbhai Patel, who had filed claim petition no.233 of 1983. She claimed exorbitant amount of Rs. 3 lacs towards compensation for her personal injuries. However, the learned Tribunal has awarded only Rs. 25,500/-. In this appeal, the appellant has restricted her claim to

Rs. 1 lac only. Considering the fact that she was hardly 20 years of age and studying in 3rd Year B.Com. and having suffered 45% of disability, the learned Tribunal has awarded Rs. 3500/- to her towards medical treatment, special diet etc. and Rs. 10,000/towards pain, shock and suffering and Rs. 1500/towards actual loss of income (which in fact was not there) and for future economic loss, an amount of Rs. 7500/- was awarded. As per the evidence of her father, she was a partner in the firm and her income was Rs. 3000/- per month. There is nothing on record to show that she had in fact suffered any loss. However, the learned Tribunal has awarded in all Rs. 9000/- and Rs. 1500/- for the loss of one academic year and Rs. 7,500/towards economic loss. Under the circumstances, we are not inclined to interfere with the said award passed by the learned Tribunal.

In view of the above discussion, we do not find any substance or merit in this appeal. Accordingly, it fails and is hereby dismissed with no order as to costs.

(B.J.Shethna,J)

(Kundan Singh,J)

***darji